

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

Writ Petition No.19671 of 2000

Between:

A. Rama Mohan and another
... Petitioners

And

The Chief Engineer, Electricity
(Operation), Cuddapah Zone,
A.P. Transco, Cuddapah and another
... Respondents

:: ORDER ::

Counsel for the Petitioners: Shri K. Murali Krishna with
Shri P. Veera
Reddy, Advcoate

Counsel for the respondents: Shri Samineni Kishore

February 14, 2007

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This is the third round of litigation by the petitioners in the matter of their appointment as Sub-Engineers in accordance with the policy contained in B.P.Ms.No.36, dated 18-5-1997 in the service of the erstwhile Andhra Pradesh State Electricity Board (for short, 'the Board'), which is now represented by A.P. Transco.

A perusal of the record shows that Writ Petition No.28943 of 1997 filed by the petitioners was disposed of by the learned Single Judge vide his order dated 3-11-1997 with a direction to the respondents to consider their cases for regular appointment as Sub-Engineers in terms of the policy decision taken by the Board. In compliance of that order, the petitioners were interviewed on 7-4-1998, but their cases were rejected by Superintending Engineer, Operation Circle, A.P.S.E.B., Nandyal Division, Kurnool (respondent No.2) vide communications dated 23-10-1998 and 6-10-1998 respectively on the premise that they had not worked under a licenced contractor. The petitioners challenged the same in Writ Petition No.17912 of 1999, which was disposed of at the admission stage in the following terms:

"It is open to the petitioners to produce additional material to show that they were working for the requisite period under the unlicensed contractor. If the petitioners produce additional evidence, the respondents shall consider the same and pass orders. The petitioners shall produce such additional evidence within four weeks from today and the respondents shall consider the same and pass fresh orders."

Thereafter, Chief Engineer, Electricity (Operation), Cuddapah Zone, Cuddapah (respondent No.1) through Memo dated 7-10-1999 instructed Divisional Electrical Engineer, Operation Nandyal

Division, Nandyal, Kurnool District (respondent No.3) to verify whether the petitioners were working under the contractor – Shri Y. Nagendranath. In his reply dated 19-11-1999, respondent No.3 gave the details of the contracts awarded to Shri Y. Nagendranath, but also mentioned that there is no evidence to show that the petitioners had worked with the contractor. Thereafter, respondent No.2 vide his letters dated

12-1-2000 declared that the petitioners are not eligible for appointment as Sub-Engineers because they were not on the rolls as on 18-5-1997.

In the affidavit filed by him, petitioner No.1 – A. Rama Mohan has averred that he and petitioner No.2 – A. Muralidhar are eligible and entitled to be appointed as Sub-Engineers because they had worked as contract labour through Shri Y. Nagendranath. He has relied on order dated 12-2-1999 passed in Writ Petition No.2684 of 1999 and pleaded that the engagement under an unlicensed contractor could not be made a ground for refusing to consider their cases for regular appointment in accordance with the policy framed by the Board. He has also relied on Memo No.ADDL.SECY/DIR/AS(IR)/FO.II/A1/1833, dated 10-5-1999 and letter No.DEE/O/NDL/APS/LAP/D.No. 4017/99, dated 19-11-1999 and averred that in view of the instructions issued by the Board for considering the claim of similarly situated persons, who too had been engaged through unlicensed contractors, the rejection of their candidature should be declared as arbitrary and violative of Articles 14 and 16 of the Constitution.

The respondents had contested the assertion contained in the affidavit of petitioner No.1 – A. Rama Mohan that he and petitioner No.2 – A. Muralidhar had been engaged by the contractor Shri Y.

Nagendranath. According to the respondents, no evidence is available regarding the engagement of the petitioners by the contractor for execution of works assigned to him in Nandyal Division. In the affidavit filed by Shri K. Anantha Reddy, Chief General Manager (HRD), APCPDCL, it has been averred that the experience certificate issued to the petitioners by the contractor cannot be relied for treating them eligible for appointment in terms of B.P.Ms.No.36, dated 18-5-1997 because the same have not been certified by the departmental officials. The deponent has strongly relied on letter dated 19-10-1999 sent by respondent No.3 to respondent No.1 to support his assertion that the petitioners had not worked with the contractor.

The petitioners have neither filed rejoinder affidavit to controvert the averments contained in the affidavit of Shri K. Anantha Reddy nor they have produced any evidence to prove that they had been engaged by the contractor for execution of works of the erstwhile Board in Nandyal Division.

I have heard learned counsel for the parties and carefully scrutinised the record. A reading of communications dated 12-1-2000 sent by respondent No.2 to the petitioners show that they were not treated eligible for appointment as Sub-Engineers on the ground that they were not on the rolls on 18-5-1997. Although this reason is legally untenable because the policy contained in B.P.Ms.No.36, dated 18-5-1997 does not contemplate consideration of only those who were on the rolls or in the employment of the contractor as on 18-5-1997, but, in my opinion, this is not sufficient for issue of a mandamus to the respondents to select and appoint them as Sub-Engineers in terms of the policy contained in B.P.Ms.No.36, dated 18-5-1997. The petitioners have not produced any tangible

evidence to prove that they had worked with the contractor. The experience certificates produced by the petitioners have not been countersigned by the officers of the Board. Therefore, the same cannot be relied for recording a finding that the petitioners were engaged by the contractor for execution of works of the Board in Nandyal Division. The petitioners have neither controverted the averments contained in the counter filed on behalf of the respondents nor they have produced any other evidence to prove that they were engaged by the contractor for doing the work allotted by the Board.

As a corollary to the above, I hold that the petitioners have failed to prove that they fall within the meaning of the term “contract labour” appearing in paragraph 4 of B.P.Ms.No.36, dated 18-5-1997, which reads as under:

“4. The A.P.S.E. Board accordingly issues the following orders in supersession of the orders issued in the reference 2 & 3rd cited.

i) Ex-Casual Labour:

The Ex-Casual labour who were already interviewed but failed in the test and given second chance and also obtained interim orders from the High Court for consideration are only eligible for selection for appointment against 50% of the existing vacancies in accordance with the guidelines contained in Memo No.DP/DM-I./A3/1138/95-1, dt.26.9.1985 read with Memo No.D/DM-I/C2/2519/93 dt.14.9.93.

ii) Village Electricity Workers:

In terms of the agreement dated 5.3.96, the cases of the village Electricity Workers shall be considered for selection and appointment against 50% of the existing vacancies subject to the condition that they are not eligible to derive any benefit for their earlier services and on selection they will be appointed as fresh candidates in A.P.S.E. Board.

iii) Contract Labour:

The Contract labour other than those engaged in 33

abolished categories in generating stations shall be considered for selection and appointment against 50% existing vacancies.”

In the result, the writ petition is dismissed.

G.S. SINGHVI, CJ

February 14, 2007

svs